

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapter 10A, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” Iowa Administrative Code.

Chapter 1 is being amended to incorporate statutory changes over the last several years.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 10, 2009. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

These amendments are intended to implement Iowa Code chapters 10A, 13B, 99D, 99F, and 237.

The following amendments are proposed.

ITEM 1. Rescind the mission statement in **481—Chapter 1** and adopt the following new mission statement in lieu thereof:

The department’s mission is to assure state and federal program integrity by adjudicating, examining, and enforcing compliance to protect the health, safety and welfare of Iowans.

ITEM 2. Amend rule 481—1.1(10A) as follows:

481—1.1(10A) Organization.

1.1(1) *Overview of the department.* The Iowa department of inspections and appeals was established by Iowa Code sections 10A.101 to ~~40A.604~~ 10A.801. The chief executive officer of the department is the director of the department of inspections and appeals who shall be appointed by the governor to serve at the pleasure of the governor subject to confirmation by the senate no less frequently than every four years.

1.1(2) *Appointment of deputy.* The director is assisted by a deputy director who is appointed by the director of inspections and appeals.

1.1(3) *Organization of department.* The department is organized into divisions which are further divided into bureaus and ~~sections~~ units.

1.1(4) *Director’s duties.* The director has general supervision over the administration and operation of all divisions. The director also develops statewide programs in compliance with the goals of the department.

1.1(5) *Deputy director’s duties.* The deputy director serves as the principal deputy to the director, ~~to assist in the development, implementation, or revision of the policies affecting overall operations and relationships in the agency; confers with staff department heads regarding the progress and problems of specific programs and operations for which they are responsible; reviews activities, reports and records, and determines conformity with policies and procedures and the need for improvements or revisions; determines and ensures that policy required by changes in the law or director action are executed, reports findings and submits recommendations to the director for approval or subsequent actions; supervises divisions requiring administrative coordination, and supervises general administrative matters.~~ The deputy director represents the director in various capacities as directed.

1.1(6) and 1.1(7) No change.

1.1(8) *Motions to quash or modify subpoena.* A person who desires to challenge a subpoena directed to that person must, within ten days after service of the subpoena, or before the time specified for compliance, if such time is less than ten days, file with the director a motion to quash or modify the subpoena. Upon receipt of a timely motion to quash or modify a subpoena, the director or the director's designee may issue a decision or request an administrative law judge to issue a decision. Oral argument may be scheduled and conducted at the discretion of the director or the director's designee or the administrative law judge. The director or the director's designee or the administrative law judge may quash or modify the subpoena, deny the motion, or issue other appropriate orders. A person aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the director by serving the director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge. The director's or the director's designee's decision is final for purposes of judicial review.

1.1(9) No change.

ITEM 3. Rescind the definition of "Department of human services" in rule **481—1.2(10A)**.

ITEM 4. Rescind rule 481—1.3(10A) and adopt the following new rule in lieu thereof:

481—1.3(10A) Administration division. This division provides administrative support to the department, including fiscal, policy and planning, information technology, and public information. This division negotiates and provides oversight for compacts entered into between the state of Iowa and Indian tribes located in the state. The division certifies targeted small businesses. The division also inspects and licenses the following entities:

1. Social and charitable gambling pursuant to Iowa Code chapter 99B;
2. Food establishments, including but not limited to restaurants, vending establishments, and mobile food units;
3. Hotels, home food establishments, and egg handlers;
4. Inspections for sanitation in any locality of the state upon written petition of five or more residents of the locality.

ITEM 5. Amend rule 481—1.4(10A) as follows:

481—1.4(10A) Investigations division. This division conducts audits and investigations, including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of ~~medical examiners~~ medicine, the board of pharmacy ~~examiners~~, the dental board of ~~dental examiners~~, and the board of nursing.
2. ~~Investigations relative to proposed sales within the state of subdivided land situated outside of the state.~~ Audits relative to the administration of hospitals and health care facilities.
3. ~~Investigations relative to applications for beer and liquor licenses.~~ Audits relative to administration and disbursement of funding under the state supplementary assistance program.
4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services.
5. Investigations relative to the operations of the department ~~of elder affairs~~ on aging.
6. Investigations relative to the administration of the state supplemental assistance program, the state medical assistance program, the food ~~stamp~~ assistance program, ~~and the family investment program, and any other state or federal benefit assistance program.~~
7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.
8. Investigations relative to Medicaid fraud and dependent adult abuse.

ITEM 6. Rescind rule 481—1.5(10A) and adopt the following new rule in lieu thereof:

481—1.5(10A) Health facilities division. This division conducts inspections and investigations, including but not limited to the following:

1. Investigations relative to the standards and practices of hospitals, hospice programs, and health care facilities.
2. Inspections and other licensing procedures relative to hospice programs, hospitals, and health care facilities. The division shall be the sole designated licensing authority for these programs and facilities.
3. Inspections relative to hospital and health care facility construction projects.
4. Inspections of child foster care facilities and private institutions for the care of dependent, neglected, and delinquent children.
5. Inspections and certification of elder group homes, assisted living programs, and adult day services programs.
6. Registration of boarding homes.
7. Investigation of dependent adult abuse in facilities and programs.

ITEM 7. Rescind rule 481—1.6(10A) and adopt the following **new** rule in lieu thereof:

481—1.6(10A) Administrative hearings division. The division conducts contested case hearings for state agencies, departments, boards, and commissions. In addition, the division conducts contested case hearings for some counties and municipalities.

1.6(1) All hearings are governed by Iowa Code chapter 17A, other applicable statutes, including the transmitting agency's enabling statute and the statute authorizing the action taken, applicable agency rules, and the department's administrative rules found at 481—Chapter 10.

1.6(2) The administrator shall coordinate the division's conduct of all hearings.

ITEM 8. Amend rule 481—1.7(10A) as follows:

481—1.7(10A) Administering discretion. Nothing in the aforesaid allocation of duties shall be interpreted to prevent flexibility in interdepartmental operations or to forbid other divisional allocations of duties in the discretion of the director ~~of the department of inspections and appeals~~.

ITEM 9. Amend rule 481—1.8(10A) as follows:

481—1.8(10A) Employment appeal board. The employment appeal board consists of three members appointed by the governor, subject to confirmation by the senate, to staggered six-year terms. One member shall be qualified by experience and affiliation to represent employers, one member shall be qualified by experience and affiliation to represent employees, and one member shall represent the general public. This board hears and decides contested cases under Iowa Code chapters 8A, subchapter IV, 49A, 80, 88, 96, and 97B and 104 in accordance with administrative rules promulgated by the employment appeal board.

ITEM 10. Amend rule 481—1.9(10A) as follows:

481—1.9(10A,237) Foster care review board. Child advocacy board. The ~~foster care review~~ child advocacy board consists of ~~seven~~ nine members appointed by the governor, subject to confirmation by the senate. This board administers foster care review and the court appointed special advocate programs, as defined in Iowa Code section ~~237.19~~ 237.18, in accordance with administrative rules promulgated by the ~~foster care review~~ board.

ITEM 11. Rescind rule 481—1.10(10A) and adopt the following **new** rule in lieu thereof:

481—1.10(10A,13B) State public defender. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under Iowa Code section 811.1A or Iowa Code chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district

court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to Iowa Code chapter 908.

ITEM 12. Rescind rule 481—1.11(10A) and adopt the following **new** rule in lieu thereof:

481—1.11(10A,99D,99F) Racing and gaming commission. The Iowa racing and gaming commission regulates pari-mutuel dog and horse racing, gambling structures, and excursion gambling boats in Iowa. The commission, whose five members are appointed by the governor, seeks to preserve the integrity of these industries and to maintain confidence in the industries by protecting the public. In performing its duties, the commission investigates the eligibility of applicants for licensure and selects those that can best serve the citizens of Iowa. The commission adopts standards for the licensing of racing industry occupations, as well as standards for the operation of all race meetings and facilities. The commission also adopts standards for the operation and licensing of gambling structures and excursion gambling boats.

ITEM 13. Rescind and reserve rule **481—1.12(10A)**.

ITEM 14. Amend **481—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~10A.104 and 17A.3(1), paragraph “a,” and Iowa Code Supplement section 10A.106 as amended by 2000 Iowa Acts, Senate File 2390, section 2~~ chapters 10A, 13B, 99D, 99F, and 237.